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Law and Legitimacy in Administrative Justice Research

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ROBERT THOMAS, Administrative Law in Action: Immigration Administration. Oxford: Hart Publishing, 2022, pp. 303, ISBN 978-1-5099-5311-0, £90 (hbk).

Introduction

The first thing one notices about Robert Thomas' book is the prioritisation of his intended contributions, evident in the book's title. In a monograph that devotes eight of its ten chapters to a detailed description of the work of the UK's immigration departments, it is telling that he leads with the notion of 'administrative law in action' rather than 'immigration administration'.

In the main core of his book, over roughly 250 pages, Thomas offers us a weighty analysis of the structure and operation of immigration decision-making. In reading it, one gets the sense of a scholar who is at the top of his game. It is something of a *tour de force*, an authoritative and comprehensive account that is hugely impressive. He takes the reader on a guided tour of the various features that, in combination, make up the UK's immigration system. We learn about organisational structures, rules and guidance, caseworking, enforcement and redress. He also discusses the Windrush scandal in depth and, more generally, addresses the phenomenon of bureaucratic oppression, which he identifies in many aspects of the routine work of these departments.

Yet, his ambition goes well beyond the context of immigration administration. His book should be read as a challenge to administrative law scholarship. He devotes most of his book to immigration administration because this is how he thinks administrative law scholarship is best conducted. His approach is a suggested alternative to generalist doctrinal work within administrative law research:

> By drawing upon a wide range of materials and combining legal analysis with that of political science, public administration and organisational studies, this book has analysed a

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number of policy, institutional and administrative-legal problems often neglected by conventional court-focused scholarship. (p. 260)

If Thomas' implicit claim is that administrative law scholarship remains dominated by generalist, court-focused, doctrinal work, then I am not sure he is correct. As an empirical scholar, I would like to see the data on that question before making up my mind (and much depends, of course, on how one defines the parameters of 'administrative law'). But there is a much more important sense in which Thomas' new book challenges us about how we should conduct research on administrative law and justice. The suggestion here is that his book operates particularly well as a corrective of the kind of administrative law scholarship that engages in what we might frame as the 'thin' critique of government. Public law scholarship risks engaging in the sharp criticism of government bodies for legal failures without taking the time to understand how and why such failures occur. At best, such critique can lack weight in its naivety, at worst it can be shrill and Pharisaic. In making this claim, I do not seek to undermine the real suffering for individuals that emanates from problematic administrative practices, nor do I seek to act as an apologist for governmental error. Rather, it is to argue that criticisms of legal failures and suggestions for reform are best grounded in a deep understanding of the pathologies of modern government. This is exactly what Thomas offers. The strength of his work lies in the fact that he devotes most of his book to demonstrating how incredibly complex and deeply embedded the immigration department's problems are.

The scale of the challenge of trying to remedy these problems is dizzying. The central eight chapters that make up the main bulk of this book read like an entirely persuasive and almost overwhelming counsel of despair. As one approaches the end of the book, one could be forgiven for thinking that Thomas has thrown in the towel, contenting himself with merely trying to understand the world, rather than attempting to change it. It is somewhat surprising, then, that in his final chapter, he sets out a tentative programme for reform within immigration administration.

Thomas argues for a distinct set of institutional arrangements to ensure oversight and scrutiny of the immigration department's progress in implementing the Windrush Review recommendations. More generally, he suggests reconstituting the immigration department as a separate body at arm's length from ministers, separately accountable to Parliament. Also proposed is an annual immigration plan to be laid before Parliament, setting out policy objectives and proposed outcomes. More fundamentally, perhaps, Thomas argues that immigration policy ambitions need to be tempered by a better sense of capacity – echoing Mashaw's notion of "searching for the good within the constraints of the possible" (Mashaw, 1983: 47). As regards operational matters, he argues for a single, comprehensive immigration statute to simplify the legal framework for officers, as well as a simplified set of immigration rules. He proposes better training for officers, more realistic performance targets, better-quality assurance processes, and the professionalisation of the role of immigration officer. As regards systems of redress, he proposes a return of appeal rights for all decisions involving complex evidential and judgmental matters, and new forms of internal and external administrative oversight more generally.

Thus, Thomas emerges from his long dark night of the soul with some level of faith in the possibilities of change. Yet, we might observe that his faith is born more from a sense

of necessity than real optimism. Consider what he says about the importance of tackling bureaucratic oppression:

> Political support is required to implement any serious and continuous programme to reduce bureaucratic oppression. This is clearly problematic in such a politically contentious area as immigration, but it is not impossible. On the contrary, it is necessary. (p. 259)

Note his juxtaposition of impossibility and necessity: 'we can because we must', as opposed to 'we will because we can'. One senses that his head and heart may be moving in different directions.

For anyone with an interest in immigration law, policy or administration, this book is an essential read. The quality of scholarship is formidable. The book is likely, one would predict, to have a long shelf life. It certainly deserves to become a landmark in the field. But in this essay I will focus more on Thomas' concern with administrative law scholarship more generally. In particular, I will focus on two key issues within the book: the meaning of 'law' and 'legitimacy'. The modest ambition here is that, by interrogating these issues further, we may add something to Thomas' significant contribution, read here as the setting out of a methodological agenda for the field.

What is 'Law' in Administrative law Scholarship?

Thomas makes much of the distinction between 'external' and 'internal' administrative law. External administrative law relates to legislation and the doctrines of judicial review. Internal administrative law, by way of contrast, refers to:

> the internal systems and processes within administration by which higher-level officials oversee, supervise and monitor the work of front-line officials … The principal purposes of internal administrative law are to allocate responsibility for, limit, guide and motivate administrative action and to impose administrative accountability on front-line officials… (p. 9)

Thomas anticipates that, for some administrative law scholars, the ascription of 'law' to these internal systems and processes might involve a certain amount of conceptual slippage. He defends his approach as follows:

> When viewed from a … court-centred approach, the notion of administration-generated administrative law may seem unusual and perhaps even troubling, or it might seem trifling… But this is to overlook the fact that internal administrative law is the practical day-to-day reality within government agencies… Internal administrative law exerts continual influence upon administration whereas judicial intervention is typically more episodic. (p. 11)

Yet, the rejoinder may be that, if we apply the label 'law' too liberally when analysing administration, the boundary between law and other phenomena becomes too fuzzy or breaks down completely. The more things become 'law', the more elusive 'legal' analysis

of administration may become. Poole, for example, advances such an argument in his review of Thomas' book (Poole, 2022):

> a preoccupation with the intricacies of governance leads to the legal elements being marginalised or washed out from the analysis… How does this approach, centred on the effectiveness by which public policy is implemented, differ from what students of public administration, public policy or public management do? What is the distinctively legal angle?

We might observe that this debate about what counts as 'law' is familiar territory for those studying legal culture. The question of what counts as 'legal' within 'legal culture' has long exercised anthropologists of law, for example (e.g., Griffiths, 1998; Merry, 1988). A brief examination of those debates is revealing and potentially quite helpful for the development of the methodological agenda within administrative law scholarship.

Brian Tamanaha has usefully summarised the various schools of thought within socio-legal studies about how we should approach the question of what is law (Tamanaha, 2001). He observes a basic distinction in relation to one's method for identifying 'law'. On the one hand are those who believe the researcher should decide what is law. On the other, there are those who believe that the question should ultimately be answered by the subjects of research – the ordinary people who form the focus of a research endeavour. This latter approach he terms 'conventional', identifying law by way of the conventions of those we study. The former approach (where it is the job of the analyst to identify 'law'), can be further divided into two: some analysts identify law according to the social ordering function it performs (a 'functional' approach); other analysts identify law by applying key conceptual criteria (an 'essentialist' approach) (see Figure 1).

Thomas' distinction between 'external' and 'internal' administrative law approximates Tamanaha's distinction between essentialist and functionalist approaches to legality. Those who question whether internal administrative law is really 'law', no doubt fear that it fails to meet some essential criteria that lie at the heart of the concept of law. Yet, Thomas is more comfortable with the label 'internal administrative law' because it shares an ordering function with external administrative law. Functionally speaking, then, it makes sense to analyse both internal and external in terms of legality.

Ultimately, as Poole notes, "the preferred understanding of administrative law must be defined by the author and elaborated as the analysis progresses" (Poole, 2022). The sense in which one operationalises 'administrative law' can be sensitive to the purpose of the analysis. But what of the 'conventional' approach to the identification of legality within public administration? This approach is much less developed in administrative law when compared to the essentialist and functionalist approaches, it is suggested. Could it too offer something to administrative law scholarship's methodological agenda?

The argument here is that it would indeed be a useful addition for the field. One way of framing the conventional approach is that it represents a combination of the analytical strengths of the other two approaches. What it shares with the essentialist approach is a tighter conceptual focus. Within the conventional approach, the boundary between
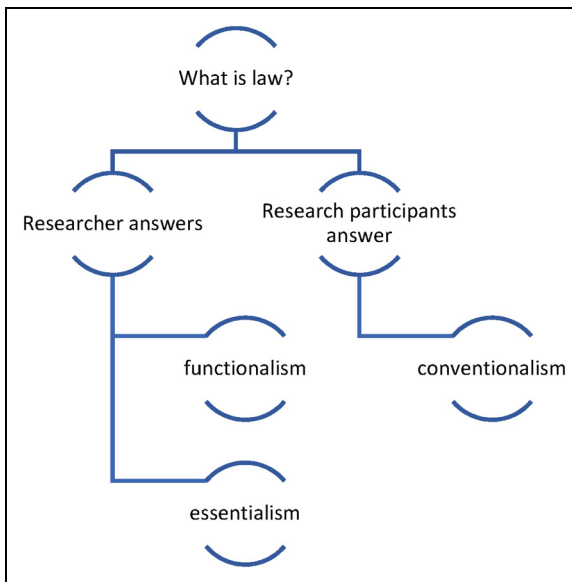
Figure 1. Methodological approaches to identifying 'law'.

the legal and the non-legal matters. The goal is to understand the specifically 'legal' within broader social normativity – the difference is simply that one allows the research participant to identify all that is specifically 'legal'. What the conventional approach shares with the functional, by way of contrast, is the conviction that legality within public agencies is likely to matter more to administrative outcomes than legality without. Methodologically, then, as with functionalism, it directs the researcher inside public offices and up to the frontline.

There is some evidence of a conventional approach within the study of administrative justice. Studies of the legal consciousness of politicians and senior officials (Cooper, 1995), or of street-level bureaucrats (Hertogh, 2010) operate in this vein. But there is scope for much more. Key questions here include not simply what is identified by officials as 'legal', but also what the significance of that ascription is for their decision-making (Halliday and Scott, 2010). As Thomas observes,

> officials often view themselves as being trapped within the iron cage of a soulless bureaucracy… some, if not many, officials are influenced by their own normative orientation as how they should best to do their jobs… They would like to enhance the quality of their work and to avoid instances of bureaucratic unfairness as far as possible. (p. 258)

The study of officials' legal consciousness is a key aspect of understanding their normative orientations: what role does legality play, when is it invoked, and what power does it hold in officials' broader normativity? The study of administrative 'law' from the perspectives of public officials thus offers a third approach to the subject, one that could add significant depth of analysis.

Administrative Legitimacy

The second issue to focus on in this review essay concerns legitimacy. Thomas touches on the issue of administrative legitimacy to make the argument that public administration should be assessed on more than its effectiveness in fulfilling its democratic mandate – in the case at hand, the control of immigration. Other values are at play, he suggests, including the competence, fairness, legality and humaneness of the administration.

The topic of administrative legitimacy is a particularly important one, it is suggested, and Thomas' focus on it is very welcome. As a concept within administrative law scholarship, it receives significant attention, though mainly from a normative perspective, absent empirical enquiry (see, e.g., Mashaw, 2018; Shapiro et al., 2012; Sunstein and Vermeule, 2020). The argument in this section is that administrative justice work on legitimacy can gain from empirical enquiry into public perceptions on administrative legitimacy. And in this regard, the field of administrative justice might draw some inspiration from the extensive empirical work on legitimacy within criminal justice, albeit that some clarifications and modifications are required.

In the next section, the criminological treatments of legitimacy are reviewed and critically assessed before those insights are applied to the field of administrative justice in the section that follows.

Legitimacy and Criminal Justice

The concept of legitimacy has long been at the heart of attempts to understand why people comply with criminal law. As Tyler has noted, law's legitimacy permits the criminal justice system to function effectively without the need for coercion (Tyler, 2006). Yet, despite the importance of the concept, it should be noted that it is not without its complexities, with scholars suggesting that it is multi-dimensional (Tyler and Jackson, 2014, p. 90), elusive (Bottoms and Tankebe, 2012, p. 168) or a source of confusion (Beetham, 2013, p. 7). Certainly, its treatment within criminological scholarship leaves room for hesitation about its precise meaning and about how best it should be operationalised within empirical research.

There are three main grounds for potential uncertainty. First, there is a basic methodological difference between some researchers and their theoretical influences relating to whose perspective matters when identifying legitimacy. Second, there is no settled definition of the concept, with different authors attributing to it various constituent elements. This problem is compounded by a degree of overlap between the concept of legitimacy itself and what is sometimes taken to be a key predictor variable, procedural justice. Third, there is variation regarding the entities on which legitimacy questions might focus, sometimes being legal officials, sometimes being law generally, and sometimes being specific laws. Each of these three grounds for potential confusion require clarification before we might consider the issue of legitimacy for administrative justice.

Legitimacy from whose perspective? The work of David Beetham (Beetham, 2013) has been particularly influential for criminological work around legitimacy (Bottoms and Tankebe, 2012; Sparks and Bottoms, 1995; Tankebe, 2013; Tyler and Jackson, 2013). Beetham's thesis was presented as a corrective of Weber's treatment of legitimacy

(Weber, 1978) which, Beetham argued, failed to offer a sense of why people acknowledge the legitimacy of power. Beetham suggested that legitimacy has "an underlying structure … common to all societies, however much its content will vary from one to the other" (Beetham, 2013, p. 22). This structure has three elements: (1) the extent to which there is adherence to prevailing rules regarding the obtaining and exercise of power; (2) the extent to which those prevailing rules align with the society's normative sensibilities; and (3) the extent of acts of recognition affirming the legitimacy of power-holders. Legitimacy is thus not an all-or-nothing affair: "legitimacy may be eroded, contested or incomplete; and judgements about it are usually judgements of degree…" (Beetham, 2013, p. 20)

At first glance, Beetham's influence on criminological work is, perhaps, surprising. Survey research, which has dominated criminological studies on this point, is generally interested in ordinary people's attitudes and perspectives with a view to understanding their behaviour. Beetham's project, however, was quite different: his goal was to equip social scientists with the tools to make *their own* assessments of the legitimacy of power in a given context, rather than seeking the perspectives of one's research participants:

> the social scientist, in concluding that a given power relationship is legitimate, is making a *judgement*, not delivering a *report* on people's belief about legitimacy. The Weberian definition … proposes quite a misleading research strategy for determining whether power is legitimate: that of asking people whether they believe it is. (Beetham, 2013, p. 13, emphasis in original)

Moreover, Beetham's project largely concerned the legitimacy of power at the macro level, permitting one to compare across societies or to account for grand shifts in power regimes across time within single societies. By way of contrast, criminological research generally works within a single society,[1] frequently has a focus on policing policy, and explores what individuals think and do in relation to law and legal authorities. In other words, for Beetham legitimacy is a feature of a power regime, one that is assessed through external observation and analysis, whereas for criminology scholars it is an aspect of individual psychology, one that is accessed via the internal viewpoints of ordinary people.[2]

Given these basic methodological differences, what is the potential usefulness of Beetham's work for empirical research on why people obey the criminal law? The answer lies in the second dimension of his concept of legitimacy: the extent of alignment between state power and the normative sensibilities of society. Beetham's work should be read as an encouragement to explore the ways in which law and legal authority match society's sensibilities about the proper basis and exercise of legal power. As he notes, "different audiences may be concerned with different dimensions of legitimacy, and assign different importance to them" (Beetham, 2013, p. 258). Thus, Beetham's schema raises an empirical question: what are society's normative expectations regarding law and the exercise of legal power? To the extent that we can detect misalignment between societal normative sensibilities and law and the exercise of legal authority, we can conclude that legitimacy is, to a degree, weakened.

Yet, a methodological question remains about exactly how the notion of normative (mis)alignment should be operationalised in empirical research. Criminologists to date have included it as a constituent element of a construct of legitimacy, inviting their respondents to indicate, for example, the extent to which they feel the police act in ways that are consistent with respondents' ideas about right and wrong (Jackson et al., 2012), or whether the police stand up for values that are important to respondents (Tyler and Jackson, 2014). However, it would be more productive and more faithful to Beetham's insights, it is suggested, to explore *what kind* of normativity (mis)aligns with public sensibilities. In other words, the reasons for any "gap in perceptions of legitimacy" (Beetham, 2013, p. 258) should be an object of empirical enquiry. Rather than asking research participants *whether* they feel morally aligned with law or legal officials, we should aim to find out *what are* the bases of moral (mis)alignment between law, legal processes and ordinary people. To achieve this, we must also consider the question of how 'legitimacy' should be framed within research project design, an issue which has been subject to considerable contestation.

What is legitimacy? What does 'legitimacy' mean in the context of exploring why people obey the criminal law? There is now a range of factors that have been associated with the construct of legitimacy (Walters and Bolger, 2019). In Tyler's seminal study, he framed the concept as comprising two elements: (1) a felt obligation to obey the law; and (2) affective support for legal authorities. However, since then, there have been a number of developments in the concept. Mostly, scholars have argued for adding further to the meaning of legitimacy. While Tyler in his original study (Tyler, 2006) treated the performance of legal authorities as a matter separate from legitimacy, issues of competence have become a constituent element of legitimacy in later research. In a study of compliance with tax law, for example, Murphy defined legitimacy to include participants' beliefs in whether the tax authorities were doing their job well (Murphy, 2005). Trust in the proper motives and intentions of legal officials – the absence of a cynicism about state law (Tyler and Huo, 2002, p. 104) – has also been added as a dimension. The issue of normative alignment between legal officials and the public, as discussed above, has become a further dimension of legitimacy (Bradford et al., 2015; Hough et al., 2010; Tyler and Jackson, 2014). Likewise, the legality of legal officials' actions – the extent to which they conform to the rules that should govern their behaviour – has been suggested as another element (Jackson et al., 2011; Tankebe, 2013). Finally, Tankebe has argued that distributive and procedural fairness should be treated as constituent elements of legitimacy (Tankebe, 2013).

Thus, as the research field has developed, the concept has expanded in various ways, with most scholars regarding it as multi-dimensional. There is no clear agreement about the exact identity of those dimensions, however. This challenge is compounded by a degree of overlap between the definition of legitimacy and a key predictor variable. Tyler's original finding (Tyler, 2006) – repeated in many subsequent studies (Walters and Bolger, 2019) – was that perceptions of procedural justice in one's personal interactions with legal officials enhance perceptions of the legitimacy of law. Yet there is a degree of overlap between these two concepts. Consider, for example, the notion of 'neutrality'. Neutrality is a key element of the concept of procedural justice (Tyler, 2017):

This involves making decisions based upon consistently applied legal principles and the facts of the case, not officers' personal opinions and biases. (Tyler and Jackson, 2014, p. 82)

Yet the notion of acting within the constraints of legal principles could also be an element of 'legality', a suggested constituent element of legitimacy (Creutzfeldt and Bradford, 2016; Jackson et al., 2011; Tankebe, 2013). Likewise, the honesty of officials could be regarded as an aspect of procedural justice (Murphy, 2005; Tyler and Degoey, 1995), relating to the dignity with which people are treated in their interactions with officials (Creutzfeldt and Bradford, 2016; Tyler, 2006), but might also be treated as part of trust in officials which is often regarded as an element of legitimacy (Tyler and Jackson, 2014).

Diversity of opinion about the constituent elements of legitimacy is also matched by a difference of views about how to feed data about perceptions of legitimacy into the analysis of its relationship to compliance. Most studies have either included items relating to various dimensions of legitimacy within a single scale or have collapsed their scales regarding the various dimensions of legitimacy into a single measure (Walters and Bolger, 2019). This often helps to create scales with a roughly even distribution, thus boosting the construct's explanatory potential (Tyler, 2006, p. 47). Yet, other studies have argued for the value of analysing separately the various dimensions of legitimacy, particularly in relation to different outcomes, such as legal compliance, co-operation with legal authorities, or broader engagement with them (Tyler and Jackson, 2014).

How should empirical researchers respond to all this? While it is to be expected that, as a field develops, key concepts may expand and empirical approaches diversify, it is important to acknowledge the unsettledness of the concept of legitimacy within criminology and to recognise the uncertainty that lies behind its use. Considering such uncertainty, there is merit in framing the concept narrowly, it is suggested. Indeed, the fact that there is some overlap within the criminological literature between the concepts of legitimacy and procedural justice supports such a move. Further, the benefit of operationalising a narrow concept of legitimacy is that it permits one to explore the question of what features of law, or legal authorities, or the exercise of legal power are associated empirically with a core sense of legitimacy.

So, what would constitute a core sense of legitimacy? For criminology, the answer would be to operationalise legitimacy as the perceived obligation to obey the criminal law. Feeling a general obligation to obey would, in other words, be evidence of research participants having conferred legitimacy on the legal order. In Beetham's terms, it would be the manifestation of a normative alignment between society and the general legal order as an aspect of state power. As he has argued, "to the extent that people acknowledge power as rightful, as validly acquired and properly exercised, they will feel a corresponding obligation to obey" (Beetham, 2013, p. xi). Equally, Tyler, as regards the study of legal compliance, has acknowledged that a felt obligation to obey is the most direct framing for the concept of legitimacy (Tyler, 2006: 27; Tyler and Jackson, 2014): hence his original suite of statements to which his participants were invited to indicate their level of agreement, such as "people should obey the law, even if it goes against what they think is right", and "I always try to follow the law, even if I think that it is wrong" (Tyler, 2006: 45).

In short, the legitimacy of the criminal law corresponds to the general conviction that one should obey it simply because it is law.[3] Accordingly, rather than collapsing a range of factors (trust, effectiveness, legality, etc.) into a construct of legitimacy for the purposes of empirical analysis, as has now become commonplace, it would be better to treat such factors as potential predictor variables.

The legitimacy of what? The final source of potential confusion around legitimacy concerns the question of what it is that might be regarded as legitimate. Within the criminological literature, considerations of legitimacy have focused on both the law and the official intermediaries who stand between the public and the law – most often the police (Hough et al., 2010; Tyler, 2017). As regards the legitimacy of law itself, the focus overwhelmingly has been on the legal order in general. This, of course, makes sense, given the dominant research focus on policing policy. The underlying policy agenda concerns the ways in which policing might enhance the perceived legitimacy of the legal order and so promote general legal compliance within society. Accordingly, one obtains data about compliance with a range of criminal law rules as a proxy for the criminal law in general, then explores the extent to which policing enhances perceptions of the legitimacy of law. Yet, there have been calls for a distinction to be made as regards the legitimacy of law: between the legitimacy of law in general and the legitimacy of specific legal rules. There is scope, in other words, for focused and narrow enquiry around the legitimacy of specific legal rules, as well as broader enquiry with regard to the criminal law in general: one might, for example, be interested specifically in tax law (Murphy, Tyler and Curtis, 2009), or in lockdown law (Halliday et al., 2022). In short, clarity is required about what exactly what within the legal order the notion of legitimacy is being attached to. This has pertinence, as we will see, for the application of the notion of legitimacy to the field of administrative justice, to which we now turn.

Legitimacy and Administrative Justice

How might we apply the above analysis to the field of administrative justice? The first and most obvious point is that there is a rich and largely untapped field of empirical enquiry concerning the public's legitimacy perceptions around administrative process. But in the context of administrative law, what specifically would the legitimacy enquiry focus on, and how would we measure the public's legitimacy perceptions?

The research agenda could usefully start, it is suggested, with a focus on the perceived legitimacy of particular administrative decisions. In other words, the enquiry could begin with an exploration of how people assess the administrative processes that produce decisions directly affecting them, or of processes to which they could conceivably be subject in the future.

As regards how to measure such legitimacy perceptions, evidence of perceived legitimacy would be contingent on the kind of administrative decision that has been made. Many administrative decisions create some form of obligation for members of the public. Decisions about how much tax is owed to the state is an obvious example. In such cases, as with criminal law, perceptions of legitimacy are evidenced in the perceived obligation to obey (Murphy et al., 2009). But absent the creation of some kind of compliance obligation, the question of perceived legitimacy becomes slightly more

challenging. And, of course, non-obligation-creating decision-making is a very common feature of the administrative state: large-scale decision-making about entitlements, for example, or assessments of need. Here, legitimacy would be evidenced, it is suggested, by someone's acceptance of their decision, notwithstanding its outcome.

There is clearly work to be done in refining a measure of such legitimacy that could be operationalised within research instruments. Yet, the research agenda is clear, it is suggested, structured by two basic questions. First, consistent with Beetham's arguments about normative alignment, the enquiry would pursue an understanding of the features surrounding the exercise of administrative power that influence the public's perceptions of the legitimacy of decisions made. Second, the enquiry would investigate the significance of perceptions of administrative (il)legitimacy for the public's civic behaviours.

As regards the first core question, all of the factors mentioned by Thomas with respect to the idea of administrative legitimacy (competence, procedural fairness, legality and humaneness) would be framed as potential predictor variables. The enquiry would centre on the extent to which, and the ways in which, these factors influence perceptions of administrative (il)legitimacy. Considerations of competence would be responsive to the particular context being studied, but would likely consider issues of speed of decision-making, the decision-maker's capacity to understand and process information, or the professional knowledge and expertise being applied by the decision-maker. Procedural fairness, subsuming humaneness, and drawing on Tyler (Tyler, 2017), would include issues of voice, neutrality, dignity and trustworthiness. But in the context of administrative decision-making, we would also add factors here regarding: 'administrative burdens' - the level of difficulty associated with making an application for public benefits or assistance (Halling & Baekgaard, 2022); the depth of the evidential base used in the decision-making process (the extent of accuracy); the degree to which the decision process relies on rules rather than discretion (the extent of formality); and the effectiveness of communication regarding the reasons for decisions made. Given the increasing use of digital technologies in administrative decision systems, we would also examine the ways in which the presence of various technologies affect perceptions of fairness. As for legality, the enquiry would focus on the extent to which guiding rules are adhered to in the decision-making process, as well as on whether those rules themselves adhere to deeper notions of basic rights.

As regards the second core question, whilst acknowledging that public perceptions of administrative legitimacy are a worthy end in itself, the research agenda would also explore how perceptions of illegitimacy shape the civic behaviours of those holding such views. Qualitative and quantitative work could promise a much deeper understanding of, for example, the extent to which and the ways in which people's engagement with welfare state agencies around ongoing needs, their willingness to complain or seek redress, or their broader civic participation is affected. Conversely, a focus on perceived administrative legitimacy would examine the ways in which it might foster positive engagement with governmental and democratic institutions.

Conclusion

Robert Thomas offers the field of administrative justice a very important study. Whilst his specific focus is on immigration law, policy and practice, his deeper concern is to shape

administrative justice scholarship. The final sentence of his book is something of a rallying cry:

> The challenge for administrative law scholars is to …[widen] their focus to include administrative institutions, how they make and implement policy, their effectiveness, how they are held to account, and what institutional designs of administration are appropriate. (p. 279)

He is surely correct in making this call, though the challenge of following through is evident in the weight of his analysis of immigration administration. The quality of this book demonstrates that the pursuit of this methodological agenda is no small feat. Perhaps here too we might have to fall back on faith born of necessity.

This essay, in addition to assessing Thomas' contribution, has sought to supplement it. The argument has been that a conventional approach to the meaning of 'law', and an empirical enquiry regards public perceptions of administrative legitimacy, will offer much to the administrative justice research agenda set out by Thomas in his excellent book.

Declaration of Conflicting Interests

Funding

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Notes

1. Most often the society is that of the USA (Walters and Bolger, 2019).
2. In this regard, Jackson *et al* suggest a distinction between 'normative' and 'empirical' conceptualisations of legitimacy. (Jackson et al., 2011).
3. Bottoms and Tankebe have argued that such a framing risks overlooking the fact that people may comply with law out of 'dull compulsion' (Bottoms and Tankebe, 2012). However, this overlooks the difference between feeling an obligation and feeling obliged (Hart, 1961: 80–81). For a critique of Bottoms and Tankebe, see Tyler and Jackson (Tyler and Jackson, 2013).

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